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ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FIRST INTERSTATE BANK,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. **CV-23-87-BLG-SPW-TJC**

**COMPLAINT FOR INCOME
TAX REFUND AND DEMAND
FOR JURY TRIAL**

First Interstate Bank, for its Complaint for Income Tax Refund, states and alleges as follows:

NATURE OF THE ACTION

1. This lawsuit concerns the failure or refusal of the Defendant to issue income tax refunds relating to Plaintiff's carry back of a net operating loss generated during the period January 1, 2019 through April 8, 2019.

PARTIES

2. Plaintiff, First Interstate Bank (hereinafter “Plaintiff”) is a domestic corporation, subject to taxation under subchapter C of the Internal Revenue Code (“IRC”) and organized under the laws of Montana.

3. Defendant is the United States of America (hereinafter “Defendant”).

JURISDICTION AND VENUE

4. This Court has original jurisdiction over this action. The United States is subject to personal jurisdiction in this District and subject matter jurisdiction exists under 28 U.S.C. § 1346(a)(1) and IRC § 7422(a).

5. Plaintiff properly exhausted all administrative remedies prior to filing the instant action as required by IRC § 7422(a). Alternatively, more than six-months has elapsed since December 29, 2020, the date Plaintiff filed its 2017 and 2018 Forms 1120X, *Amended U.S. Corporation Income Tax Return*, seeking a refund of taxes previously paid with its 2017 and 2018 Forms 1120, *U.S. Corporation Income Tax Return*, by virtue of its net operating loss carry back from 2019. Despite the passage of more than six-months, the Commissioner of Internal Revenue has failed to issue the refunds as required by IRC § 6532(a).

6. Venue is proper in the District of Montana and in the Billings Division pursuant to 28 U.S.C. § 1402(a)(2) as at the time of filing this Complaint, Plaintiff’s principal place of business is in Billings, Montana.

7. Plaintiff, as successor to Idaho Independent Bank (“IIBK”) by virtue of a merger, has standing in this action although the amended returns claiming the refunds were filed by IIBK.

ALLEGATIONS COMMON TO ALL COUNTS

8. On October 11, 2018, Plaintiff entered into an Agreement and Plan of Merger with IIBK under which IIBK was to be merged with and into Plaintiff (the “Merger”).

9. The Merger was completed pursuant to the Plan of Merger, effective on April 8, 2019.

10. IIBK was merged into Plaintiff pursuant to Montana State law and thus Plaintiff was the survivor of the two entities after the Merger.

11. By virtue of the Merger, Plaintiff is the successor to IIBK.

12. Due to the Merger, IIBK was required to file a final return for the period January 1, 2019 to April 8, 2019.

13. IIBK was required to file its return by August 15, 2019, four (4) months and 15 days from the close of its short year.

14. By way of electronic submission, IIBK timely filed its short year return on July 3, 2019, for the period January 1, 2019 to April 8, 2019.

15. IIBK’s short year return was accepted by the IRS on July 3, 2019.

16. IIBK's short year return generated a net operating loss in the amount of \$6,589,988.

17. As part of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Plaintiff was allowed to carry back net operating losses generated in tax years beginning January 1, 2018 through December 31, 2020, for up to five (5) years.

18. A 2017 Form 1120X, *Amended U.S. Corporation Income Tax Return*, for IIBK, which included the carryback from 2019, was filed on December 29, 2020.

19. A 2018 Form 1120X, *Amended U.S. Corporation Income Tax Return*, for IIBK, which included the carryback from 2019, was filed on December 29, 2020.

COUNT I – REFUND CLAIMED FOR 2017

20. Plaintiff restates and re-alleges each and every allegation set forth in paragraph 1-19 as if fully set forth herein.

21. Pursuant to the CARES Act, a Form 1120X, *Amended U.S. Corporation Income Tax Return*, was filed for IIBK for tax year 2017, claiming a refund of \$536,531.

22. Plaintiff is entitled to the refund of taxes previously paid with its 2017 Form 1120, *U.S. Corporation Income Tax Return*, by virtue of its net operating loss carry back from 2019, in the amount of \$536,531.

23. As of the date of this filing, despite timely filing a claim for refund and being entitled to do so, the IRS has not issued Plaintiff the refund for the 2017 tax year.

COUNT II – REFUND CLAIMED FOR 2018

24. Plaintiff restates and re-alleges each and every allegation set forth in paragraph 1-19 as if fully set forth herein.

25. Pursuant to the CARES Act, a Form 1120X, *Amended U.S. Corporation Income Tax Return*, was filed for IIBK for tax year 2018, claiming a refund of \$1,704,064.

26. Plaintiff is entitled to the refund of taxes previously paid in 2018 Form 1120, *U.S. Corporation Income Tax Return*, by virtue of its net operating loss carry back from 2019, in the amount of \$1,704,064.

27. As of the date of this filing, despite timely filing a claim for refund and being entitled to do so, the IRS has not issued Plaintiff the refund for the 2018 tax year.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment in favor of Plaintiff and against Defendant in the amount of \$536,531 and \$1,704,064 for 2017 and 2018, respectively, plus interest thereon at the maximum rate provided

for by law, for attorney's fees and costs associated with the prosecution of this suit, and for such further relief as the Court deems proper.

DEMAND FOR A JURY TRIAL

Pursuant to Federal Rules of Civil Procedure 38(b), Plaintiff respectfully requests a trial by jury on all issues triable by a jury.

Dated this 21st day of July, 2023.

By: /s/ Shane P. Coleman
Shane P. Coleman
BILLSTEIN, MONSON & SMALL PLLC

ATTORNEYS FOR PLAINTIFF